

JAMES T. HACKWORTH

IBLA 82-985

Decided August 10, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 28920.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

APPEARANCES: James T. Hackworth, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James T. Hackworth appeals the California State Office, Bureau of Land Management (BLM), decision of June 18, 1982, which declared the unpatented Douglas lode mining claim, CA MC 28920, abandoned and void because no proof of labor or notice of intention to hold the claim was filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The proof of labor was received by BLM June 9, 1982.

Appellant states only that he thought he had transmitted the 1981 proof of labor to BLM after recording it in Shasta County, California, September 21, 1981. He asserts he is actually engaged in mining operations on the claim and has filed his proposed operations notice with the BLM district office in Redding, California.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1(a), and 3833.4(a), require that evidence of assessment work or a notice of intention to hold for each mining claim located on public land be filed both with the county recorder's office where the notice of location is of record, and in the proper BLM office prior to December 31 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed in both places.

Despite appellant's statement that he thought he had mailed the proof of labor to BLM in September 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even though the document was mailed and the Postal Service delayed it from reaching the BLM office timely or lost it in transit, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Inez Crews, 59 IBLA 257 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filing. Edward P. Murphy, 48 IBLA 211 (1981); Everett Yount, *supra*; James E. Yates, 42 IBLA 391 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f). The Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

